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C O U N S E L O R S A T L A W

Form LM-10: Surprising New DOL Enforcement of Reporting and Disclosure Requirements

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Why Is This Issue Important Now?

- The Department of Labor's focus/commitment
- July 2005 LM-10 Advisory
- August 15, 2005 LM-30 filing deadline
- Limited time to file once guidance released
- Ongoing nature of obligation and need for policies and procedures going forward

Why Do We Care About the LMRDA Reporting Requirements?

- The LMRDA's broad definition of "Employer"
 - Reporting and disclosure requirements apply regardless of whether operations are unionized
- President and treasurer must sign completed LM-10 reports
 - Criminal and monetary penalties apply
- Information contained on LM-10 reports implicates other statutes with equally onerous criminal penalties
 - Section 302 of the Labor-Management Relations Act
 - 18 U.S.C. § 1954
 - Section 2, Fourth of the RLA
- Disclosures are available to the public and compared with LM-30 union reports

Test Your LM-10 Knowledge

1. Your company sponsors a free golf outing each summer for customers and business partners, and a union official attends. Reportable?
2. One of your company's employees takes a union official out for dinner at a cost of \$50 per person. Reportable?
3. Your company hosts an event attended by business partners and union officials, but did not keep track of who actually attended. Reportable?
4. Your company sells merchandise to major union customers at a discount. Reportable?
5. Your company pays wages to an employee who is the local union president at one of your locations and spends more than half of his time on union business. Reportable?

Question #1

- Your company sponsors a free golf outing each summer for customers and business partners, and a union official attends. Reportable?

Employer Broadly Defined

- An employer under any employment law, engaging in an industry affecting commerce.
 - “employs employees”
 - only one employee
- DOL intends to interpret broadly.
- Need not have unionized employees.

Reportable Transactions

Form LM-10: Employer Report

- Payments of money or other things of value to unions, union officers, union employees, and union agents.
- Payments relating to persuader activity.

Form LM-30: Union Report

- Financial interest in or transactions with an employer whose employees your union represents or seeks to represent.
- Financial interest or receipt of income from a business that deals with an employer whose employees your union represents or seeks to represent.
- Receipt of money or other thing of value from any employer.

Examples of Potentially Reportable Payments

- Meals
- Gifts
- Tickets to sporting or other entertainment events
- Travel expenses and/or reimbursements
- Hotel accommodations
- Free products or services
- Airfare

Question #2

- One of your company's employees takes a union official out for dinner at a cost of \$50 per person. Reportable?
 - What if the cost of dinner is \$20 per person?

The \$25.00 *De Minimis* Exception

- Administrative Exception
- Payments need not be reported if:
 1. \$25.00 or less;
 2. sporadic or occasional in nature; and
 3. given under circumstances unrelated to the recipient's status in a labor organization.
- Not a simple \$25 test.

Examples of *De Minimis* Transactions

- Lunch costing \$15 per person during quarterly meetings with union officials. company provides similar lunches during meetings with other business partners.
- Annual holiday gifts, valued at \$20, to union officials. The same gifts are presented to other business partners.

Reimbursements for Employer Payments

- Reimbursed payment need not be reported, provided the reimbursement occurs in the same fiscal year as the payment.

Question #3

- Your company hosts a lavish event (costing more than \$25 per person) attended by business partners and union officials, but did not keep track of who actually attended. Reportable?

Good-Faith Reporting Obligation

- Must make reasonable, good-faith efforts to locate and compile relevant information.
- Must make reasonable estimates where possible.
- Partial information is permissible.
- Heightened expectation in future years likely.

Question #4

- Your company sells merchandise to major union customers at a discount. Reportable?
 - What if your company provides union customers with free products or services in connection with purchased products or services?
 - What if your company provides the union officer responsible for purchasing with products or services for personal use?

Exception for Purchase or Sale of Commodities

- Form LM-10 Instructions exclude payments contained in Section 302(c) of the LMRA from reporting requirement.
- Section 302(c) includes the purchase or sale of a commodity at the market price in the regular course of business.

Question #5

- Your company pays wages to an employee who is the local union president at one of your locations and spends more than half of his time on union business. Reportable?

Exception for Wages

- Form LM-10 Instructions
 - Payments to employees for periods of nonproductive work during regular working hours, provided such payments are required by a collective bargaining agreement or are made pursuant to an established custom or practice under such an agreement (e.g., wages, benefits, reimbursements, service recognition awards).
- Section 302(c)
 - Compensation for, or by reason of, service as an employee of such employer.
- Watch: DOL's New LM-30 Proposed Rule (Caterpillar issue revisited)



LM-10 Reporting and Related Issues— Other Information

Other Exceptions and Reportable Events

- Payments excluded from LM-10 reporting – Section 302(c):
 - Dues check-off.
 - Benefit trust fund payments (various other requirements).
 - Payments to joint labor-management committees.
- Other LM-10 Reportable Events:
 - Payments to employees for “purpose” of causing them to persuade others in relation to bargaining (unless disclosed).
 - Outside “persuader” arrangements and payments.
 - Expenditures where “object” is to interfere, restrain or coerce employees, or to obtain information about employee or union activities “in connection with a labor dispute.”

Criminal and Monetary Penalties

- LMRDA:
 - Criminal penalties for failing to file or filing false information.
 - Responsibility imposed on president and treasurer.
- Other Statutes:
 - Section 302 of the LMRA
 - 18 U.S.C. § 1954
 - Section 2, Fourth of the RLA

Reporting Mechanics

- Report required in any year in which reportable conduct occurred.
- Report due within 90 days of the close of the employer's fiscal year.
- Records of reportable transactions must be retained for 5 years.
- Submitted reports are publicly available, and may be viewed on the DOL's website.
- DOL intends to compare LM-10 and LM-30 reports.

Recent Developments

- LM-30 Proposed Rules
 - Payments to union officers or employees for nonproductive time.
 - The *de minimis* exception.
- Employer community reaction

Looking Ahead

- Forthcoming Guidance
- Collecting Information for Fiscal Years 2004/2005
- Retaining Information from Fiscal Years 2005/2006
- Developing Recordkeeping Policies and Procedures
- Developing Payment Policies

The background is a dark blue gradient. In the center, there is a faint, stylized image of a person in a dynamic, athletic pose, possibly a dancer or a person in motion. The person's limbs are extended, and they appear to be wearing a dark outfit. In the top-left and bottom-right corners, there are wireframe globes, which are spherical structures composed of intersecting lines, resembling a globe's latitude and longitude lines.

PARTICIPANT QUESTIONS

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